

1 the record as Press Exhibit No. 20.

2 JUDGE CHACHKIN: It will be so identified.

3 (The document referred to was
4 marked for identification as
5 Press Exhibit No. 20.)

6 MR. COLE: And we have also distributed to Your
7 Honor, the reporter and counsel for the parties a document
8 22 pages in length with an unnumbered, unpaginated cover
9 page entitled "Press Broadcasting Company, Inc. Hearing
10 Exhibit, Transcript of Deposition of Clay Pendarvis
11 Conducted May 23, 1996."

12 And I request that that be identified for the
13 record as Press Exhibit No. 21.

14 JUDGE CHACHKIN: It will be so identified.

15 (The document referred to was
16 marked for identification as
17 Press Exhibit No. 21.)

18 MR. COLE: Thank you, Your Honor.

19 And I propose to offer all of these into evidence
20 as Press exhibits, and I think that's where we left it prior
21 to going off the record.

22 MS. POLIVY: Your Honor, we will not object to the
23 introduction of any of them.

24 JUDGE CHACHKIN: All right.

25 MS. POLIVY: I am sorry for the inconvenience. We

1 did not have the opportunity to look at the transcript
2 before we came.

3 JUDGE CHACHKIN: All right. Press Exhibits 19, 20
4 and 21 are received in evidence.

5 MR. COLE: Thank you, Your Honor.

6 (The documents referred to,
7 having been previously marked
8 for identification as Press
9 Exhibit Nos. 19, 20 and 21,
10 were received in evidence.)

11 MR. COLE: And finally I have one last document
12 which I also referenced in the last session, which is the
13 answers of Douglas J. Sandifer to the first set of
14 interrogatories propounded by Press Broadcasting in this
15 proceeding. Particularly, I am distributing to Your Honor
16 and the parties, the original and one copy goes to the
17 reporter. It's a four page document with an unnumbered,
18 unpaginated cover page.

19 And I request that this be marked for
20 identification as Press Exhibit 22.

21 JUDGE CHACHKIN: The document described will be so
22 marked.

23 (The document referred to was
24 marked for identification as
25 Press Exhibit No. 22.)

1 MR. COLE: Thank you, Your Honor.

2 And I should state for the record that I have, in
3 anticipation that one or another parties might object to
4 this without the presence of a live witness to support it
5 and cross-examine it, that these are only answers to
6 interrogatories, not depositions for which all counsel
7 participated.

8 I sought a subpoena from Your Honor to compel the
9 appearance of Mr. Sandifer at this morning's proceeding.
10 Your Honor has declined to issue the subpoena based, as I
11 understand your ruling, on relevance grounds, and therefore
12 I understand that Your Honor may take the position that
13 these answers in the exhibit is irrelevant, but I would like
14 to offer it for the record in any event.

15 JUDGE CHACHKIN: All right. Any objection?

16 MS. POLIVY: Objection to its introduction, Your
17 Honor?

18 JUDGE CHACHKIN: Yes.

19 MS. POLIVY: Yes, I do.

20 JUDGE CHACHKIN: All right, the objection is
21 sustained on the grounds of relevance.

22 MS. POLIVY: Your Honor, I object because he is
23 not present here as a live witness.

24 JUDGE CHACHKIN: Well, it wouldn't make any
25 difference --

1 MS. POLIVY: Okay.

2 JUDGE CHACHKIN: -- if he is present or not. I
3 still reject the exhibit.

4 MS. POLIVY: I understand.

5 JUDGE CHACHKIN: I wouldn't sign the subpoena.
6 The reason is the conversation with Gordon in 1991 is not
7 relevant to the subsequent conversations with Gordon and Ms.
8 Polivy in June of 1993. So I will sustain the objection.
9 This exhibit is rejected.

10 (The document referred to,
11 having been previously marked
12 for identification as Press
13 Exhibit No. 22, was rejected.)

14 MR. COLE: Thank you, Your Honor.

15 And that completes Press's showing.

16 JUDGE CHACHKIN: Well, there was testimony under
17 cross-examination of Mr. Gordon about his belief that the ex
18 parte rules applied, and conversations that he had with
19 other persons concerning whether or not the ex parte rules
20 applied.

21 Now, there is one statement here concerning a
22 discussion with Mr. Gordon and Mr. Daniels. But I believe
23 his testimony is he didn't recall this conversation.

24 MS. POLIVY: No, he didn't.

25 JUDGE CHACHKIN: I don't know if he was asked any

1 questions about any conversation with Mr. Sandifer. He was
2 asked about the letter generally.

3 MR. EISEN: Right.

4 JUDGE CHACHKIN: In any event, let me indicate
5 this. That ordinarily if those questions were not asked, I
6 would sustain an objection to this exhibit. But now we have
7 a situation where there was a -- there are statements here
8 that Mr. Gordon made a statement to him that the proceeding
9 was restricted.

10 MS. POLIVY: Your Honor, if we were not permitted
11 to go into the conversations regarding the application of
12 the ex parte rules and what Mr. Gordon knew about the ex
13 parte rules, whether he didn't know about 1.1212, what he
14 knew about the other rules, how can we now have something
15 that goes into an alleged conversation in 1991 with someone
16 else at the Commission?

17 You know, we have taken the position that all of
18 those things are relevant.

19 JUDGE CHACHKIN: No, no.

20 MS. POLIVY: And we believe they should have been
21 permitted.

22 JUDGE CHACHKIN: No, no, there were questions
23 asked whether he had made a statement specifically to Mr.
24 Pendarvis --

25 MS. POLIVY: Yes, but that --

1 JUDGE CHACHKIN: -- about Ms. Polivy's belief.

2 MR. EISEN: Right.

3 JUDGE CHACHKIN: And also whether he had anything,
4 made any statements to any Commission personnel concerning,
5 that the proceeding was restricted, his view that the
6 proceeding was restricted. He was asked questions of that
7 nature. I don't remember the exact questions he was asked.

8 MR. EISEN: He was asked why he believed that it
9 was restricted.

10 JUDGE CHACHKIN: No, but I'm -- wasn't he asked
11 also whether or not he had informed anyone of his opinion
12 that the proceeding was restricted prior to July 1993? I
13 thought he was asked that.

14 MR. EISEN: I asked him whether he sent any memos
15 to the file.

16 JUDGE CHACHKIN: Yes. Well, in any event, there
17 has been objections based on the fact that Mr. Gordon --
18 that Mr. Sandifer is not here, and I would sustain the
19 objection on that ground also, as well as not being
20 relevant, except as I pointed out, I think questions were
21 asked, and therefore I might have permitted Mr. Sandifer to
22 testify about that one point, whether or not Mr. Gordon
23 indicated to him at that point whether the proceeding was
24 restricted since questions were put to him on that area.

25 MS. POLIVY: Well, then we should have been

1 permitted to ask Mr. Gordon questions about his conversation
2 with Mr. Sandifer --

3 JUDGE CHACHKIN: You were permitted to --

4 MS. POLIVY: with -- no, it wasn't within the
5 scope of direct.

6 JUDGE CHACHKIN: Well, I permitted, I permitted
7 any question to be asked concerning any statements that Mr.
8 Gordon made to anyone concerning whether the proceeding was
9 restricted and why he considered ex parte. I permitted
10 those questions.

11 And similarly, in that same vein, I would have
12 permitted such testimony if it had been elicited. Since the
13 question was not elicited by any part as to Mr. Gordon's
14 conversation with Mr. Sandifer, then under those
15 circumstances the question has not arisen.

16 If Mr. Cole or someone else had asked the question
17 concerning that conversation that Mr. Gordon had, I would
18 permit this. I would take a different tack. But in light
19 of the fact that nobody asked Mr. Gordon about any specific
20 questions any discussions that happened with Mr. Sandifer --

21 MR. EISEN: There were no questions.

22 JUDGE CHACHKIN: -- there were no questions. I am
23 saying it would have been relevant if the question had been
24 raised, and then I would have taken a different position
25 with respect to Mr. Sandifer as a witness. But since no

1 such question was raised, under the circumstances I am going
2 to reject Press Exhibit 22.

3 Anything further, Mr. Cole?

4 MR. COLE: No, Your Honor.

5 JUDGE CHACHKIN: I assume none of the parties have
6 anything else to offer in this proceeding; is that correct?

7 MR. EISEN: I would like to offer Exhibit No. 2
8 again simply for purposes of impeachment with regard to Mr.
9 Gordon's testimony.

10 JUDGE CHACHKIN: I have received Exhibit 2.

11 MS. POLIVY: No.

12 JUDGE CHACHKIN: Rainbow Exhibit 2 is what?

13 MR. EISEN: Those are the affidavits of Barbara
14 Kreisman, Clay Pendarvis and Roy Stewart.

15 JUDGE CHACHKIN: And is there anything in these
16 affidavits which relate to the conversation between Mr.
17 Gordon and Ms. Polivy?

18 If there is, point it out.

19 MR. EISEN: Well, there is certainly testimony in
20 the affidavits. For instance, Ms. Kreisman's testimony that
21 Mr. Pendarvis and she believed that the filing of informal
22 objections did not bring the proceeding into the ex parte.

23 JUDGE CHACHKIN: How does that impeach Mr. Gordon?

24 MR. EISEN: He believed otherwise.

25 JUDGE CHACHKIN: Well, how does that impeach him?

1 MR. EISEN: Well.

2 JUDGE CHACHKIN: If there is anything relating to
3 anything that Mr. Gordon said about his conversation with
4 Ms. Polivy, that would be relevant to impeachment, if it's
5 contrary to what he testified to today. There apparently
6 was nothing in any of these affidavits which relate to that
7 subject.

8 (Pause.)

9 MR. EISEN: I don't think we can find anything
10 directly.

11 JUDGE CHACHKIN: All right, then I will not
12 reconsider my ruling.

13 All right, the record in this proceeding is now
14 closed, and we will go off the record to establish
15 procedural dates.

16 (Discussion off the record.)

17 JUDGE CHACHKIN: Off the record the following
18 dates have been established.

19 The filings will be filed on or about -- well, the
20 filings, the scheduled date for filing the findings is
21 September 19, 1996, and replies will be filed on October 10,
22 1996. And copies of the findings will be hand-delivered or
23 faxed to opposing counsel.

24 MS. POLIVY: Hand-delivered, please.

25 JUDGE CHACHKIN: By September 19, on September 19.

1 MS. POLIVY: We will hand-deliver ours if the rest
2 of you will hand-deliver yours.

3 MR. SILBERMAN: We will make them available.

4 MS. POLIVY: Have you ever seen 100 pages coming
5 out of a fax machine?

6 That's okay, we will deal with it.

7 JUDGE CHACHKIN: All right, the parties will
8 arrange that they will get them on September 19. As far as
9 replies go, that could be mailed.

10 MS. POLIVY: That's fine.

11 JUDGE CHACHKIN: All right, we are now off the
12 record.

13 (Whereupon, at 10:31 a.m., the hearing was
14 recessed.)

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REPORTER'S CERTIFICATE

FCC DOCKET NO.: 95-172
CASE TITLE: Rainbow Broadcasting Company
HEARING DATE: July 11, 1996
LOCATION: Washington, D. C.

I hereby certify that the proceedings and evidence are contained fully and accurately on the tapes and notes reported by me at the hearing in the above case before the Federal Communications Commission.

Date:

7/11/96



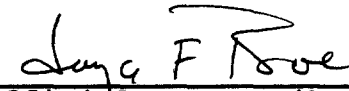
Official Reporter
Heritage Reporting Corporation
1220 "L" Street, N.W.
Washington, D.C. 20005
Perry S. Patterson

TRANSCRIBER'S CERTIFICATE

I hereby certify that the proceedings and evidence were fully and accurately transcribed from the tapes and notes provided by the above named reporter in the above case before the Federal Communications Commission.

Date:

7/15/96



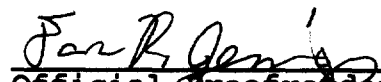
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Joyce F. Boe

PROOFREADER'S CERTIFICATE

I hereby certify that the transcript of the proceedings and evidence in the above referenced case that was held before the Federal Communications Commission was proofread on the date specified below.

Date:

7/19/96



Official Proofreader
Heritage Reporting Corporation
Don R. Jennings

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 90-2554 DIV-SM

JOSEPH REY, et. al.,
Plaintiffs,
vs.
GUY GANNETT PUBLISHING CO.,
et. al.,
Defendants.

RECEIVED

AUG 14 1996

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

172 West Flagler Street
Miami, Florida
December 18, 1990
12:34 p.m. - 4:15 p.m.

Deposition of Joseph Rey

Taken before Stan Seplin, Certified
Shorthand Reporter and Notary Public in and for
the State of Florida at Large, pursuant to Notice
of Taking Deposition filed in the above cause.

Federal Communications Commission	
Docket No. <u>90-95-172</u>	Exhibit No. <u>13</u>
Presented by <u>Margot Polivy, Esq.</u> <u>Rainbow Broadcasting</u>	
Disposition	Identified <u>X</u>
	Received <u>X</u>
	Rejected <u> </u>
Reporter <u>Patterson, Kerry</u>	
Date <u>7/19/96</u>	

JACK BESONER AND ASSOCIATES, INC.
172 West Flagler Street, Miami, Florida 33130 (305) 371-1537

1 BY MR. HARDEMAN:

2 Q. Half the question is, the top slot is
3 described at a certain height above average
4 terrain, or above the ground, and your antenna
5 will be up at that height, if you--

6 A. Only if I share it.

7 Q. Only if you share it?

8 A. That's what they are telling me.

9 Q. So the fact that someone elses antenna
10 is at least partially in your spot, is what you
11 object to?

12 A. I object to the fact that Gannett is
13 now attempting to perpetrate the lie that the slot
14 leased to Rainbow, was not exclusive.

15 Q. Do you know what length antenna,
16 Channel 18 is proposing to put on the tower?

17 A. I do not.

18 Q. Do you know where in relation to your
19 antenna, their antenna will be?

20 A. I--

21 Q. Or was proposed to be?

22 A. I don't recall off the top of my head.
23 I know it's within the space of
24 Rainbow.

25 Q. Do you understand that the physical

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

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- - - Federal Communications Comm.

Docket No.	GC-95-172	Exhibit No.	13
Presented by	Margot Polivy, ESO.	Rainbow	Account
Disposition	Identified	X	
	Received	X	
	Rejected		
Reporter	Patterson, Perry		
Date	7/1/91		

1 BY MR. HARDEMAN:

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3 described at a certain height above average
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16 Channel 18 is proposing to put on the tower?

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19 antenna, their antenna will be?

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23 I know it's within the space of
24 Rainbow.

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AUG 14 1996

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In re Applications of)

RAINBOW BROADCASTING COMPANY)

For an extension of time)
to construct)

and)

For an Assignment of its)
construction permit for)
Station WRBW(TV), Orlando, Florida)

TO: The Honorable Joseph Chackin
Administrative Law Judge

GC Docket No. 95-172
File No. BMPCT-910625KP
File No. BMPCT-910125KE
File No. BTCCT-911129KT

PRESS BROADCASTING COMPANY, INC.
HEARING EXHIBIT

NO. 19

Transcript of Deposition
of Roy J. Stewart
conducted May 23, 1996

Federal Communications Commission	
Docket No.	GC-95-172 Exhibit No. <u>19</u>
Presented by	<u>Henry Cole, ESQ./Press Broadcast</u>
Disposition	Identified <u>X</u>
	Received <u>X</u>
	Rejected <u> </u>
Reporter	<u>Beth Ann Penn</u>
Date	<u>7/11/96</u>

COPY

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AUG 14 1996

BEFORE THE FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C.

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

----- X
:
IN RE: Applications of : GC Docket No.
Rainbow Broadcasting Company : 95-172
for an extension of time to : File Nos.
construct and for an assignment : BMPCT-910625KP
of its construction permit for : BMPCT-910125KE
Station WRBW (TV), Orlando, : BTCCT-911129KT
Florida. :
:
----- X

Washington, D.C.

Thursday, May 23, 1996

Deposition of

ROY STEWART

a witness of lawful age, taken on behalf of
Press Broadcasting Company, Inc., in the
above-entitled action, before Thomas R.
Brezina, notary public in and for the District
of Columbia, in the offices of the Federal
Communications Commission, 1919 M Street, Room
314, Washington, D.C., commencing at
9:28 a.m., when were present on behalf of the
following parties:

BETA

1 APPEARANCES:

2 On behalf of Rainbow Broadcasting Company,
3 Inc.:

4 ALLAN G. MOSKOWITZ, ESQUIRE
5 BRUCE A. EISEN, ESQUIRE
6 Kaye, Scholer, Fierman, Hays & Handler
7 901 15th Street, N.W.
8 Washington, D.C. 20005
9 (202) 682-3500

10 On behalf of Rainbow Broadcasting, Ltd.:

11 MARGOT POLIVY, ESQUIRE
12 Renouf & Polivy
13 1532 16th Street, N.W.
14 Washington, D.C. 20036
15 (202) 265-1807

16 On behalf of Press Broadcasting Company, Inc.:

17 HARRY F. COLE, ESQUIRE
18 Bechtel & Cole, Chartered
19 1901 L Street, N.W., Suite 250
20 Washington, D.C. 20036
21 (202) 833-4190

22 On behalf of FCC:

STEWART A. BLOCK, ESQUIRE
DAVID SILBERMAN, ESQUIRE
Federal Communications Commission
Office of General Counsel
1919 M Street, N.W., Suite 602
Washington, D.C. 20554
(202) 418-1740

1 On behalf of Witness:

2 CHARLES DZIEDZIC, ESQUIRE
3 Federal Communications Commission
4 1919 M Street, N.W., Room 712
Washington, D.C. 20554
(202) 418-1604

5 ALSO PRESENT: Mr. Joseph Rey

6 * * * * *

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C O N T E N T S

EXAMINATION BY:	PAGE
Counel for Press Broadcasting	5
Counsel for Rainbow Broadcasting, Ltd.	16

* * * * *

P R O C E E D I N G S

Whereupon,

ROY STEWART

was called as a witness and, having been first
duly sworn, was examined and testified as
follows:

EXAMINATION BY COUNSEL FOR PRESS

BROADCASTING COMPANY, INC.

BY MR. COLE:

Q Good morning, Mr. Stewart. Could you
state your name and position for the record.

A My name is Roy Stewart, and I'm chief
of the mass media bureau of the Federal
Communications Commission.

Q And what is your office address?

A 1919 M Street, Northwest, Washington,
D.C. I think the room is 314.

Q Thank you, sir.

Mr. Stewart, we appreciate your
taking the time out of your schedule to do
this, and we're going to try to make it as
quick as possible. And certainly, based on Ms.

1 Kreisman's deposition, it should go very
2 quickly. If you have any questions,
3 clarifications, or requests for further
4 information, please don't hesitate to ask.
5 We'll try to make sure that all the questions
6 are clear for you before you have to answer
7 them.

8 How long have you been chief of the
9 mass media bureau?

10 A Let's see. Since October 1989.

11 Q And how long have you been at the
12 FCC?

13 A Oh, probably close to 30 years now.

14 Q All right. And you're an attorney by
15 training?

16 A Yes, I am.

17 Q Sir, the hearing in connection with
18 which we're conducting this deposition includes
19 in its caption three applications filed by
20 Rainbow Broadcasting Company. And I'll refer
21 to that as RBC occasionally just for
22 convenience's sake.

1 Those applications include two
2 applications for extension of RBC's
3 construction permit for Channel 65 in Orlando
4 and one application for consent to the
5 assignment of that permit.

6 Are you generally familiar with those
7 applications?

8 A Just in the general sense. I've
9 never looked at the applications' content.

10 Q I'm not going to ask questions about
11 the substance. I just want to orient you to
12 what we're talking about here.

13 Sir, during the period of time
14 January 1991, which is when the first of those
15 captioned applications was filed, through July
16 of 1993, did you have any oral communications
17 with anyone acting on behalf of RBC with
18 respect to any RBC application which was
19 pending before the bureau at the time of the
20 communication?

21 A The July '93 date, is that the date
22 that the outstanding letter had been sent out

1 by the video services division?

2 Q I'm sorry. Let me orient you on
3 that. June 18 was the date of the video
4 services division letter. July 30, I believe,
5 is the date of your letter, and that's -- July
6 30, end of July '93, was selected as a stop
7 date because that was the date of your letter
8 going out.

9 A And your question was, did I have
10 contact?

11 Q Any oral communications with anyone
12 acting on behalf of RBC during that period of
13 time where the communications concerned any RBC
14 application which was pending before the bureau
15 at the time of the communication?

16 A Yes, I did.

17 Q Do you know how many communications
18 you had?

19 A I had -- I assume that the -- the
20 contact by phone initiated by Toni Cook was
21 somehow related to that. I don't know if she
22 represented them or -- I don't think so at the

1 time, but that was one.

2 I had a telephone call from a Margot
3 Polivy with respect to those applications.
4 That was the second, and then there was
5 subsequently a meeting in my office with Margot
6 and some members of my staff.

7 Q Do you recall the date of the
8 meeting?

9 A Probably late June or early July. I
10 don't remember.

11 Q Okay. And the call from Miss Polivy
12 preceded that meeting; is that correct?

13 A Yes, it did.

14 Q And the call from Miss Cook preceded
15 both the call from Miss Polivy and the meeting?

16 A Yes.

17 Q Now, with respect to the Toni Cook
18 conversation, was that by telephone, or was it
19 a meeting?

20 A That was a phone call from Toni Cook
21 to me.

22 Q At any time during the conversation